

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

N.B., a Minor, by her Parents,	:	Case No. 1:20-cv-699
Natural Guardians, and Next Friends	:	
DWAN BRAY and AARON BRAY,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BON SECOURS MERCY HEALTH,	:	
INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	

NOTICE OF REMOVAL

1. Under 42 U.S.C. § 233(c), the United States of America is removing to this Court a civil action originally filed by Plaintiffs Dwan Bray and Aaron Bray in the Hamilton County Court of Common Pleas. Plaintiffs' Complaint is attached at Exhibit A.

2. Under the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g), the Department of Health and Human Services on January 1, 2015, deemed HealthSource of Ohio, Inc. to be an employee of the Public Health Service, and its deemed status has continued without interruption since that date.

3. Defendant Timothy J. Thress, M.D., an employee of HealthSource of Ohio, Inc., was deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. § 233(a) at the time of the alleged incident out of which Plaintiffs' action

arose.

4. Under 42 U.S.C. § 233(c) and 28 C.F.R. § 15.4, the United States Attorney for the Southern District of Ohio has certified that HealthSource of Ohio, Inc. was acting within the scope of its employment as an employee of the Public Health Service at the time of the alleged incident out of which Plaintiffs' action arose, and that Timothy J. Thress, M.D., an employee of HealthSource of Ohio, Inc., an entity deemed by statute to be an employee of the Public Health Service, was acting within the scope of his employment as an employee of the Public Health Service at the time of the alleged incident out of which Plaintiffs' action arose. *See* United States Attorney's Certification of Scope of Employment (attached as Exhibit B).

5. Congress has stated that “[u]pon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States” 42 U.S.C. § 233(c). Plaintiffs' action has been removed properly to this Court under 42 U.S.C. § 233(c).

6. Under 42 U.S.C. § 233(a), the remedy against the United States provided by sections 1346(b) and 2672 of title 28 is exclusive of any other civil action. Under 28 U.S.C. § 1346(b), commonly referred to as the Federal Tort Claims Act (FTCA), federal district courts are vested with exclusive jurisdiction. *See* 28 U.S.C. § 1346(b).

7. A copy of this Notice of Removal will be filed promptly with the Clerk of the Hamilton County Court of Common Pleas, which will effect the removal. *See* 28 U.S.C. § 1446(d).

8. Copies of the parties' answers and motions from the Hamilton County Court of Common Pleas proceedings are attached as Exhibits C-J.

Respectfully submitted,

DAVID M. DEVILLERS
United States Attorney

s/Matthew J. Horwitz

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CERTIFICATE OF SERVICE

I certify that on September 8, 2020, I filed the foregoing Notice of Removal using the CM/ECF system, and I certify that on the same date a copy of the foregoing was sent by first class mail to the following persons:

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